IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 159 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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JAYANTILAL B PUROHIT & 2 - Appellant(s)
Versus
SHANKERLAL M PUROHIT & 2 - Defendant(s)

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Appearance :
MR MC SHAH for Appellant(s) : 1 - 3.
MR RN SHAH for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellants have challenged the judgment and decree of the learned Joint District Judge, Sabarkantha at Himatnagar passed in Civil Misc. Application(Probate) No.2 of 1980 whereby the trial Court allowed the said application.

2.0 The brief facts of the case are that deceased Bai Jivkor, widow of one Jayashankar Vidyaram expired on 16.09.1978. Prior to her death,

she had executed a 'Will' dated 28th March, 1967. In the said 'Will', the names of the present opponents were shown as the executors and trustees of the 'Will'. Therefore, they filed an application to obtain probate of the will made by the deceased Jivkorben.

2.1 In the said application, after hearing the parties, the trial Court passed the judgment and decree which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the trial Court has committed an error in holding that the 'Will' in question was executed by deceased by Jivkorben. He has further submitted that the trial Court ought to have held that since several blanks and insufficient particulars were there in the said document, the same cannot be held as 'Will'.

4.0 On the other hand, learned Advocate for the appellants has supported the order of the trial Court and has contended that the trial Court has passed the

impugned judgment and decree after taking into consideration all the facts and circumstances of the present case, and hence, no case is made out calling for interference of this Court.

5.0 Heard, learned Counsel for the parties. It is not in dispute that the deceased Jivkorben was in the exclusive possession of the immovable properties belonging to her husband and continued to be in possession of the same until her death. It was the case of the appellants before the trial Court that deceased Jivkorben executed a document dated 17th May, 1978 in their favour and had put them in possession of all her properties, and had not disposed of her properties in favour of any body by way of mortgage or 'Will' etc., the xerox copy of which is produced at mark 38/1.

5.1 The appellants have stated in their written statement (Exh.15) that the document produced at Mark 38/1 has been misplaced by the appellant No.1 during the shifting process, when his office was under repair. However, the appellant No.1-himself in his

examination-in-chief (Exh.68) has give an altogether different version of the whole story. In his cross-examination, he has stated that the said document was lost in June, 1978 due to collapse of his house in Bombay. Thus, the appellants have given two different version before the trial Court for non-production of the original document placed at mark 38/1.

5.2 Therefore, it is established that the appellants have fabricated a false document in order to show that the same was executed by deceased Jivkorben in their favour. I am, therefore, of the view that the Tribunal was completely justified in granting probate of 'Will' in favour of the present opponents. I am in complete agreement with the reasonings given and findings arrived at by the trial Court, and hence, find no reason to interfere in this appeal.

5.3 Now, since two out of the three opponents have already expired, I am of the opinion that ends of the justice would met if the only living Trustee,

i.e. opponent No.3-Jethalal Khemchand Shah, is directed to appoint two new Trustees for managing the affairs of the property in question.

6.0 In above view of the matter, the appeal is dismissed. The opponent No.3-Jethalal Khemchand Shah is directed to appoint two new Trustees for the purpose of managing the affairs of the property in question. With the above directions, the appeal stands disposed of. No order as to costs.

(K.S, Jhaveri,J.)

Umesh/